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STATE OF INDIANA

INDIANA UTILITY

INDIANA UTILITY REGULATORY COMMISSION REGULATORY COMMISSION

PETITION OF L.M.H. UTILITIES )  
CORP. FOR AUTHORITY TO CHANGE ) CAUSE NO. 43431  
ITS RATES, CHARGES, TARIFFS, )  
RULES AND REGULATIONS. )

PREFILED DIRECT TESTIMONY OF

JAY T. TUCKER

On behalf of

L.M.H. UTILITIES CORP.

**PREFILED DIRECT TESTIMONY OF JAY T. TUCKER  
ON BEHALF OF L.M.H. UTILITIES CORP.  
INDIANA UTILITY REGULATORY COMMISSION  
CAUSE NO. 43431**

1           1    **Q.       PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2                   A.       My name is Jay T. Tucker. My business address is 2005 Jamison Road,  
3                               Bright, Indiana 47025.

4           2    **Q.       ARE YOU AFFILIATED WITH THE PETITIONER, L.M.H.**  
5                               **UTILITY CORP.?**

6                   A.       Yes. I currently serve as President of Petitioner.

7           3    **Q.       MR. TUCKER, DID YOU REVIEW THE PETITION WHICH**  
8                               **INITIATED THIS CAUSE?**

9                   A.       Yes. I reviewed the Petition in its draft stage; discussed the draft with our  
10                              counsel, along with Mr. Sommer of London Witte Group; and authorized  
11                              its filing with this Commission.

12           4    **Q.       MR. TUCKER, DO YOU BELIEVE THE INFORMATION SET**  
13                              **FORTH IN THAT PETITION REMAINS ACCURATE AS OF THE**  
14                              **PREFILING OF YOUR TESTIMONY?**

15                   A.       Yes, I do.

16           5    **Q.       DO YOU HOLD ANY DEGREES OR LICENSES?**

17                   A.       Yes. I hold a bachelor degree from Hanover College and a Class II  
18                              Wastewater Operator's License from IDEM.

1           6    **Q.       DO YOU HAVE ANY OTHER EXPERIENCE WHICH YOU**  
2                           **BELIEVE IS RELEVANT TO THE CONCLUSIONS YOU SET**  
3                           **FORTH IN THIS PREFILED TESTIMONY?**

4           A.       Yes. I have been involved in the excavation and utility facility installation  
5                           business for over 30 years. Further, I have reviewed the Commission's  
6                           order in Cause No. 43022 and discussed that order extensively with our  
7                           consultants in order to understand the issues Petitioner is facing. Finally, I  
8                           reviewed all of the plant currently being used which was evaluated by our  
9                           engineer, Mr. Limcaco.

10          7    **Q.       HAVE YOU PARTICIPATED IN CAPITAL IMPROVEMENTS OF**  
11                           **OTHER UTILITIES?**

12          A.       Yes. I have worked on projects for Tri-Township Water, Verizon,  
13                           Comcast, and Southeastern Indiana REMC. Additionally I have worked  
14                           with various end users seeking to extend facilities for purposes of  
15                           connecting to various utilities.

16          8    **Q.       WHEN WERE PETITIONER'S BASE RATES AND CHARGES**  
17                           **LAST CHANGED?**

18          A.       January 1998.

19          9    **Q.       SINCE 1998, HAS PETITIONER ADDED ADDITIONAL**  
20                           **FACILITIES TO ITS PLANT IN SERVICE?**

21          A.       Yes.

22          10   **Q.       SINCE 1998, HAS PETITIONER EXPERIENCED INCREASES IN**  
23                           **ITS OPERATING EXPENSES?**

1           A.     Yes.

2           11    **Q.     YOU HAVE INDICATED A FAMILIARITY WITH THE**  
3                   **COMMISSION'S ORDER IN 43022, AND INDICATED YOU**  
4                   **HAVE DISCUSSED THAT ORDER WITH YOUR**  
5                   **CONSULTANTS. WOULD YOU DESCRIBE YOUR**  
6                   **UNDERSTANDING OF THAT ORDER.**

7           A.     While the Commission's order is quite detailed and its analysis and  
8                   conclusions are revealed over a number of pages, I believe the order  
9                   reflects that the Commission has found our books and records unreliable  
10                  and not properly maintained under the Uniform System of Accounts.  
11                  Further, the order makes clear that the Commission was unable to  
12                  determine what investment the Petitioner has made in its rate base. The  
13                  Commission also questioned whether the plant in service was used and  
14                  useful, and reflected concerns about the company's borrowing and  
15                  affiliated interest practices. Finally, I believe the Commission was  
16                  encouraging us to work collaboratively with the OUCC's office to resolve  
17                  these matters.

18          12    **Q.     MR. TUCKER, HAS THE PETITIONER WORKED**  
19                   **COLLABORATIVELY WITH THE OUCC'S OFFICE ON THESE**  
20                   **ISSUES?**

21          A.     Yes, we have. Through our accountants, engineer, and attorney,  
22                  information has been exchanged and various meetings have been held.

1           13    **Q.     AS PRESIDENT OF THE PETITIONER, DID YOU PERSONALLY**  
2                   **PARTICIPATE IN ANY MEETINGS WITH THE OUCC'S**  
3                   **OFFICE?**

4            **A.**     Yes, I did.

5           14    **Q.     MR. TUCKER, HOW HAS PETITIONER ADDRESSED THE**  
6                   **ISSUE OF THE UNRELIABILITY OF ITS BOOKS AND**  
7                   **RECORDS REFLECTED IN THE COMMISSION'S ORDER IN**  
8                   **CAUSE NO. 43022?**

9            **A.**     The Petitioner has retained London Witte Group, specifically Mr. Sommer  
10                   and Ms. Gemmecke, to restate our books and records in accordance with  
11                   the Uniform System of Accounts.

12          15    **Q.     DO YOU BELIEVE THESE RESTATED BOOKS AND RECORDS**  
13                   **ACCURATELY REFLECT PETITIONER'S OPERATIONS AND**  
14                   **INVESTMENT?**

15          **A.**     Yes, I do. While I am not an accountant, I have discussed our restated  
16                   books and records on numerous occasions with both Mr. Sommer and Ms.  
17                   Gemmecke. Based upon their description of what they have done, and the  
18                   analysis they have made, along with my own familiarity with our plant  
19                   and its operation, I believe these restated books accurately reflect  
20                   Petitioner's operation.

21          16    **Q.     HOW HAS PETITIONER ADDRESSED THE ISSUE OF THE**  
22                   **VALUE OF ITS INVESTMENT IN ITS PLANT?**

1           A.       We retained the services of a professional engineer experienced in the  
2                    design of wastewater treatment plants – Christopher A. Limcaco, a witness  
3                    in this case. We asked Mr. Limcaco to evaluate our current plant and  
4                    provide a reasonable current value of that plant. Mr. Limcaco has done so  
5                    and provided testimony explaining his various methodologies and the  
6                    conclusions he reached. .

7           17     **Q.     ARE YOU FAMILIAR WITH THE COMMISSION’S CONCERN**  
8                    **EXPRESSED IN ITS ORDER IN CAUSE NO. 43022 AS TO THE**  
9                    **CONCEPT OF CONTRIBUTIONS IN THE AID OF**  
10                  **CONSTRUCTION?**

11          A.       Yes, I am. It is my understanding that the Petitioner cannot earn a return  
12                    on plant funded by contributions from customers or developers. Thus, any  
13                    value assigned to the plant for purposes of earning a return on investment  
14                    must exclude any portion of the plant funded through these contributions.

15          18     **Q.     DO YOU BELIEVE THE MATERIAL PROVIDED IN THIS CASE**  
16                    **WHICH DISCUSSES THE VALUE OF PETITIONER’S PLANT IN**  
17                    **SERVICE, ELIMINATES PLANT WHICH WAS FUNDED BY**  
18                    **CONTRIBUTIONS IN THE AID OF CONSTRUCTION?**

19          A.       Yes, I do. I have had extensive discussions with Ms. Gemmecke, Mr.  
20                    Sommer, and Mr. Limcaco about what portions of the plant were or could  
21                    have been funded by contributions in the aid of construction. It is my  
22                    understanding that our accountants in this case have now eliminated any  
23                    contributions in aid of construction from the value of plant.

1           19    **Q.    DO YOU BELIEVE THAT THE CONCLUSIONS REACHED BY**  
2                                   **MR. LIMCACO ON PLANT IN SERVICE AND THE**  
3                                   **CONCLUSIONS REACHED BY MR. SOMMER AND MS.**  
4                                   **GEMMECKE ON RATE BASE ARE REASONABLE?**

5           A.    Yes, I do. By viewing our investment in a conservative light, and by  
6                                   eliminating contributions, I believe the plant in service value and the rate  
7                                   base filed in this case are reasonable for purposes of establishing rates in  
8                                   this Cause.

9           20    **Q.    MR. TUCKER, IS YOUR PLANT IN SERVICE USED AND**  
10                               **USEFUL IN SERVING YOUR CUSTOMERS?**

11          A.    Yes, it is. The entire plant is used to collect and treat sewage. The plant,  
12                               as it has now been expanded, is useful in meeting the requirements for the  
13                               quality of effluent exiting the treatment plant. Prior to our most recent  
14                               replacement of pumps, headwork screens, piping, and expansion of our  
15                               capacity, the plant was over 90% usage, as more specifically described by  
16                               our engineer.

17          21    **Q.    WILL YOUR RECENT CAPITAL IMPROVEMENTS ALLOW**  
18                               **YOU TO SERVE OTHER CUSTOMERS?**

19          A.    Yes.

20          22    **Q.    WITH THE ABILITY TO SERVE ADDITIONAL CUSTOMERS,**  
21                               **DOES THIS MEAN YOUR CURRENT PLANT HAS**  
22                               **UNNECESSARY CAPACITY?**

1           A.       No. As described by our engineer, Mr. Limcaco, the expansion that was  
2                   done was necessary in order to properly serve our current customers. As  
3                   noted by Mr. Limcaco, our treatment plant is a sequential batch reactor  
4                   which is expanded in a symmetrical form. While we will be able to take  
5                   on new customers because we are below 90% of capacity, the capital  
6                   improvements that we constructed were necessary to provide good service  
7                   to our current customers.

8           23     **Q.       PRIOR TO L.M.H.'S DECISION TO EXPAND ITS PLANT, DID**  
9                   **L.M.H. CONSIDER ANY INDEPENDENT INPUT?**

10           A.       Yes, we were advised by both Mr. Limcaco and RNK Environmental, Inc.  
11                   that we needed to expand our plant as soon as possible.

12           24     **Q.       MR. TUCKER, ARE YOU FAMILIAR WITH THE**  
13                   **COMMISSION'S COMMENTS IN CAUSE NO. 43022 THAT THE**  
14                   **PLANT ADDITION MIGHT BE AVOIDED IF SUMP PUMPS**  
15                   **WHICH WERE POTENTIALLY CONNECTED TO YOUR**  
16                   **COLLECTION SYSTEM WERE DISCONNECTED?**

17           A.       Yes, I am familiar with the Commission's concern in that regard.

18           25     **Q.       HAVE YOU INVESTIGATED WHETHER SUMP PUMPS ARE**  
19                   **CONNECTED AND IF SO, ATTEMPTED TO GET THEM**  
20                   **DISCONNECTED?**

21           A.       Yes. I believe at most there are approximately 60 homes with potential  
22                   sump pump connections. We have sent out information to those



1 homeowners on the need to disconnect any sump pumps or ground water  
2 connections to the sewer system.

3 26 Q. **WILL THE ELIMINATION OF SUMP PUMPS CAUSE YOUR**  
4 **EXPANDED PLANT TO BE UNDERUTILIZED?**

5 A. No, it won't. The number of potential sump pump connections is small  
6 compared to the total connections. Further, sump pumps typically only add  
7 flow to peak days following a rainfall. As Mr. Limcaco has testified, our  
8 plant already exceeded 90% of its capacity on average day flows. Thus,  
9 even with complete elimination of any connected sump pumps, our  
10 engineer has indicated expansion as completed was necessary.

11 27 Q. **WITH RESPECT TO THE COMMISSION'S CONCERNS ABOUT**  
12 **THE PETITIONER'S BORROWING PRACTICES AND**  
13 **AFFILIATED INTEREST CONTRACTS, WHAT IF ANYTHING**  
14 **HAVE YOU DONE?**

15 A. Following extensive discussion with our consultants, we have decided not  
16 to borrow any funds at this time. We also understand that we cannot  
17 borrow funds unless we comply with the statute that requires us to obtain  
18 Commission approval for such borrowing. Further, in keeping with the  
19 OUCC's position in Cause 43022, we have added an infusion of equity  
20 into the company.

21 With respect to affiliated interest contracts, we have eliminated  
22 those underlying transactions. The only affiliated interest transactions  
23 occurring on a regular basis relate to the use of office space and the

1 sharing of insurance coverage. In each instance, affiliated interest  
2 contracts have been on file with the Commission since 1998. These two  
3 particular affiliated interest transactions reduce the operating expense from  
4 what it would be if we had stand-alone office space or insurance.

5 28 Q. **IN LIGHT OF THE FACT THAT L.M.H. HISTORICALLY HAS**  
6 **USED AFFILIATES FOR LABORATORY ANALYSIS, SLUDGE**  
7 **PROCESSING, AND OPERATING ASSISTANCE, HOW WILL**  
8 **L.M.H. AVOID AFFILIATED TRANSACTIONS?**

9 A. We anticipate that L.M.H. employees will handle all of these functions  
10 going forward. Further, to the extent that affiliated transactions occur, we  
11 understand that affiliated transaction contracts must be filed with the  
12 Commission.

13 29 Q. **MR. TUCKER, DO YOU BELIEVE THAT THE PROPOSED**  
14 **CHANGES IN YOUR RATES AND CHARGES, AS**  
15 **RECOMMENDED BY YOUR ACCOUNTANTS IN THIS CASE,**  
16 **ARE REASONABLE?**

17 A. Yes, I do. While I am not an accountant, I am familiar with the  
18 anticipated cost of operating this utility on a going forward basis. I am  
19 also generally familiar with the costs of sewage collection and treatment in  
20 other locales based upon my affiliation with various associations. While I  
21 recognize that a rate which is fair in one service area may not be  
22 appropriate in another, I believe that the rates proposed here are

1 reasonable, fair, and will allow this company to meet the needs of its  
2 customers going forward for the foreseeable future.

3 30 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

4 A. Yes.

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